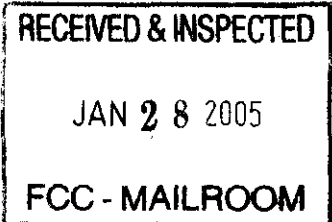


**LINDA SCHRECKINGER SADLER**  
Attorney At Law



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Cleveland, OH 44146  
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DOCKET FILE COPY ORIGINAL

January 25, 2005

Office of the Secretary  
Federal Communications Commission  
445 -12th Street, S.W., Rm TW-204B  
Washington, D.C. 20554

RE: Appeal to the Federal Communications Commission  
Boone County School District, Billed Entity No. 126667

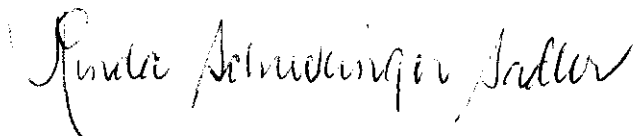
To Whom It May Concern:

Enclosed please find an appeal from a decision by the Schools and Libraries Division of the USAC relative to the school district noted above.

Enclosed are an original and five copies of the Appeal and Request for Expedited Relief. Please file the original and four of the copies and return one time-stamped copy to me in the enclosed self addressed-stamped envelope.

Please direct all communication regarding this appeal to my attention at the address noted above. Thank you for your assistance in this matter.

Yours truly,



Linda Schreckinger Sadler

Encl.

No. of Copies rec'd  
List ABCDE

014

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

**RECEIVED & INSPECTED**

**JAN 28 2005**

**FCC - MAILROOM**

<b>In the Matter of</b>	)	<b>File No. SLD -</b>
	)	
<b>Appeal of Decision of the</b>	)	
	)	
<b>Universal Service Administrator</b>	)	
	)	
<b>By</b>	)	<b>CC Docket No. 96 - 45</b>
	)	
<b>Boone County School District</b>	)	
<b>Madison, WV</b>	)	
	)	<b>CC Docket No. 97 - 21</b>
	)	
<b>Federal-State Joint Board on</b>	)	
<b>Universal Service</b>	)	
<b>Changes to the Board of Directors of</b>	)	
<b>The National Exchange Carrier</b>	)	
<b>Association, Inc.</b>	)	

**Appeal and Request for Expedited Relief  
on behalf of the  
Boone County School District**

**TO:** Federal Communications Commission  
Office of the Secretary  
445 - 12th Street, SW  
Washington, DC 20554

**Appeal From the Following Funding Commitment Decision Letter**

Form 471 Application Number:	431035
Funding Year 2004:	07/01/2003-06/30/2004
Billed Entity Number:	126667
FRN:	1196804
Date of Funding Denial Notice:	December 3, 2004

### **SLD's Reason for Funding Denial**

The SLD denied funding on all this Application for the reason that "30% or more of this FRN includes a request for Edline webhosting service which is an ineligible product(s)/service(s) based on program rules."

### **Statement in Support of Appeal**

Boone County School District of Madison West Virginia ("Boone") seeks review of a decision by the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC"). The decision by the SLD denied Boone funding for web hosting for the July 1, 2003-June 30, 2004 Funding Year for the reason that "30% or more of this FRN includes a request for Edline webhosting service which is an ineligible product(s)/service(s) based on program rules."

#### **1. The SLD applied the "30% rule" incorrectly when it denied Applicant's request for webhosting services**

Boone County School District properly prepared, and timely filed, a FCC Form 471 for web hosting services with Edline as the vendor. The SLD denied funding on the grounds that: "30% or more of this FRN includes a request for Edline webhosting service which is an ineligible product(s)/service(s) based on program rules." Boone appeals this decision on the basis that it's request for web hosting services was fully eligible and that the SLD wrongfully denied its request basing its decision on incorrect assumptions.

##### **a. Web hosting is an eligible service**

Web hosting is an eligible service under the Internet Access section of the Eligible Services List for Funding Year 2004. It is for this service that Boone applied. Edline, the web

hosting provider selected by Boone, submitted a bid and contract for its services. It appears that the SLD wrongly interpreted language contained in the bid/contract and relied on its misinterpretation in denying funding for this item. During the Program Integrity Assessment (PIA) the only documentation that was requested was a detailed bill for services. In response to the request, a copy of the bid and contract were both provided. The SLD made no further inquiry, requested no further documentation or clarification and denied funding for Boone's web hosting request. The SLD failed to consider all relevant factors necessary to make such determination and its decision should be reversed.

Boone alleges that the services provided by Edline are fully eligible. Items contained in the contract that appear to be ineligible, are, in fact eligible under the parameters established by the Special Eligibility, Ancillary Use section of the Eligible Services List. This section provides:

If a product or service includes ineligible functionality, then in general, the proportionate cost of this functionality must be removed from funding requests through a cost allocation process. However, in certain limited cases, if any ineligible functionality is strictly ancillary to the principle uses of the product or service, the full product or service may be eligible for discounts.

The following conditions are considered when evaluating whether ineligible functionality is ancillary:

- The package must represent the most cost-effective bid for the eligible product or service.
- The consideration of cost-effectiveness must be made without considering ineligible features.
- The package is a standard product offering that includes the ineligible features as an integral, intrinsic part, with no separated pricing available.
- The applicant cannot be specifically seeking any of the ineligible components.

The web hosting services requested by Boone clearly fall within the Internet Access Special Eligibility exceptions. It was error on the part of the SLD when it failed to apply the Special Eligibility section of Internet Access to the Boone's contract with Edline. Looking to the

conditions necessary to establish ancillary use, a review of Boone's application and documentation demonstrates that all these conditions have been met. (1) Boone chose Edline using vendor selection criteria and selected Edline as the most cost effective bid for web hosting service; (2) Boone's selection of Edline looked to the cost effectiveness of the web hosting services they could provide and gave no consideration to the other (ineligible) components of the bid; (3) the services deemed by the SLD to be ineligible are an intrinsic part of Edline's standard web hosting package with no separate pricing available (see bid response and contract attached hereto as Exhibit A); and (4) Boone did not specifically seek any of the ineligible components contained in the bid; they sought web hosting and the additional features provided by Edline were clearly ancillary to the web hosting service sought by Boone. Since Boone's application and vendor selection processes clearly comply with all four conditions necessary to establish 'ancillary use' it was wrong of the SLD to deny funding for web hosting service. The SLD should have considered Boone's web hosting request under the Special Eligibility Section of Internet Access and granted funding. Compounding its error, the SLD made an unsubstantiated finding that these "ineligible" services comprised more than 30% of the eligible services request – something completely unsupported by the documentation in its file. It is obvious that the SLD made erroneous assumptions with respect to this FRN and denied funding based on those assumptions. For this reason their decision should be overturned and Boone County School District should receive funding for web hosting services.

**b. Supplemental documentation**

USAC appeal guidelines permit new information to be provided on appeal for the purpose of clarifying an ambiguity contained in earlier information. See *Request For Review by Shawano-Gresham School District*.<sup>1</sup> On its face, the Edline bid and/or contained ambiguities that the SLD failed to clarify through the PIA process. It was the SLD's incorrect assumptions

and failure to resolve bid/contractual ambiguities that resulted in the denial of funding for Boone. The SLD's own guidelines permit the submission of documentation on appeal when the applicant points out an incorrect assumption by the SLD, the documentation is consistent with information initially provided and is being offered on appeal to resolve an ambiguity. See *Shawano-Gresham*, supra. In accordance with these procedures, attached hereto Boone submits a communication from Edline clarifying the items contained in the bid and/or contract that caused the SLD to deny funding (See Exhibit "B").

This new information is not being submitted to contradict earlier information but is being offered to clarify ambiguities contained in earlier information. The original Edline bid and/or contract contains language regarding items and services that were likely deemed ineligible by the SLD, to wit: "This cost includes: Hardware and Software necessary for the Edline solution." Exhibit "B" clarifies the bid/contract provisions by showing that, although referenced in the contract, no hardware or content are provided. This supplemental documentation demonstrates that the requested services are for web hosting, and web hosting only, and therefore comply with eligible services standards. It serves to clarify ambiguities contained in earlier information upon which the SLD denied funding. For these reasons, it should be considered for the purposes of this appeal.

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<sup>1</sup> See *Request For Review by Shawano-Gresham School District*, File No. SLD-292913, CC Docket No. 02-6, Order DA 04-308 (Adopted February 5, 2004).

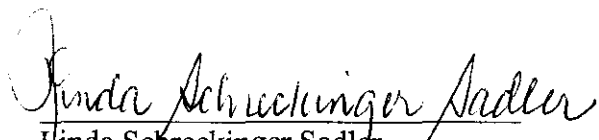
## **Conclusion**

It is clear that the SLD made erroneous assumptions based upon the language contained in the Edline bid and/or contract and used these assumptions as grounds for denying funding to Boone for eligible web hosting services. The supplemental documentation provided herein points out these incorrect assumptions which concern an issue consistent with the information originally provided. This document provides the SLD with the opportunity to correct its erroneous assumptions. For this reason, the documentation should be considered. See *Shawano-Gresham*, supra, at Paragraph 6.

Applicant hereby requests:

1. That this matter be acted upon within 90 days or less of the filing date of this appeal;
2. That the FCC order funding for the FRN set forth herein.
3. That funds be set aside to totally fund the District's request.

Respectfully submitted,



Linda Schreckinger Sadler  
Attorney at Law  
Ohio Bar No. 0000827  
25801 Richmond Road  
Cleveland, OH 44146  
Phone: 216-831-2626  
Fax: 216-831-2811  
Email: [lschrecks@yahoo.com](mailto:lschrecks@yahoo.com)

## Exhibit A





# **Response to Boone County School District**

**Form 470's # 200800000467909**

**Submitted by  
Edline (SPIN #143027282)  
162 N. Franklin Street  
Chicago, IL 60606**

**January 16, 2004**

## Introduction

Edline (SPIN #143027282) is pleased to respond to your Form 470 200800000467909. We are responding only as a district wide provider of web hosting services.

Edline provides the leading website and portal solution for K12 education. Used by schools in all 50 states and numerous countries, Edline has been recognized in Newsweek magazine, Fox & NBC television, educational technology publications such as T.H.E. Journal, and countless newspapers across the country (see attached samples).

Edline is a comprehensive, end-to-end, web hosting solution that can be used to supplement your current school websites, or be used to completely serve all of your school or district's web hosting needs. With Edline:

- Every district and every school in the district receives its own website.
- All school and district subgroups receive a complete website solution (no page or traffic limit):
  - Every class has its own website/homepage (with homework, grades, calendars, and more) within the district or school site.
  - Every team and club has its own website within the district or school site.
  - Every staff group or parent group (PTA, school committees, etc.) has its own website within the district or school site.
- Every student, parent, teacher, and administrator receives a unique user account for personalized security, permissions, and access (essential for making grades and other private information available at your school's website).
- The public can view general school information at any time without a password, but private information is visible only to visitors that login with a screen name and password.
- Email alerts notify parents, students, and teachers of critical new information at your school's website (attendance, new grades, policies, etc.) Works with any email provider.

Because Edline is *easy to use* (visitors to your school's website are immediately presented with personalized links to the classroom, team, or other group homepages that apply specifically to them), *comprehensive* (everything from lunch menus to teacher-only resources to classroom-level progress reports for parents), and *secure* (you can post private grades and reports for personalized access with 128-bit encryption), Edline has tremendous impact on school performance and will enable you to:

1. Increase Parental Involvement.
2. Improve Internal Communication.
3. Reduce paper-based costs (photocopying, envelopes, etc.).
4. Improve Student Achievement.

## Web Hosting in a K12 Setting: Edline Essentials

Edline is truly unique in the K12 marketplace. Below are just a few examples of the remarkable power and usability of Edline's K12 web hosting solutions. To more fully appreciate the time-savings and cost-efficiency of Edline, we encourage you to view a live web demonstration of Edline.

1. **Easy for IT Personnel to Implement.** With Edline, there's no hardware to buy, software to install, or servers to manage. Edline is a turn-key service, and we manage all of the infrastructure for you, twenty-four hours a day, seven days a week – web servers, routers, bandwidth, firewalls, load balancing, site monitoring, backup, fail-over systems, hardware repairs, and more – everything you need to host an enterprise website for thousands of users in a K12 setting. This greatly reduces time, effort, and cost.
2. **Easy for Teachers.** Edline web hosting is designed for the average teacher – there is no need to use *HTML*, *FTP*, or be a computer expert.
  - a. Teachers and staff can easily post pre-existing content (so there is no need to retype or recreate previous work) to their Edline web pages using just a browser – no *FTP* or *HTML* required. Teachers can post homework, lessons, or other resources previously created in Acrobat, Word, PowerPoint, or other formats. Teachers can also cut and paste or simply type directly onto their Edline pages. Using most common gradebook software applications, teachers can post hundreds of student progress reports to their Edline classroom website in a matter of seconds using Edline's one-click publishing protocol.
  - b. Edline's special mass "rollover" feature allows teachers to rollover web-calendars by the day, week, month, or year to make semester and yearly transitions easy at classroom websites. They can also quickly re-publish content if there is an unexpected change, such as a "snow" day.
  - c. Edline special "multi-class" web posting allows teachers to post homework, calendar items, or other content to several class web pages simultaneously (e.g. a teacher has three sections of biology with separate groups of students and separate home pages, but 50% of the content at the various biology home pages is identical).
  - d. Edline automatically archives teacher web pages at the end of each semester so that homework, lessons, calendars, and other content can be easily re-used on future classroom websites.
3. **Easy to use with your WEVIS (CIMS) Student Information System.** Using CIMS with Edline rapidly configures (in a matter of minutes) your school website to have designated homepages for every classroom. Updates from CIMS are instantly incorporated in your class websites, so that class web pages accurately reflect currently offered classes. Class rosters are also updated. Parents and students' shortcut links reflect their current classes, so they are immediately able to locate their own class web pages.
4. **Proprietary "One Click" Publishing.** Edline's unique "one click" publishing protocol allows teachers and administrators to transfer/publish files to your school's website seamlessly from a variety of sources, including most third party student information systems and gradebook applications. For example, Edline One Click Publishing enables teachers to securely post hundreds of personalized and grade, attendance, or other progress reports from most leading gradebook software applications, including GradeQuick in seconds.

## Conclusion

Edline provides K12 website and portal solutions that truly impact school performance and student achievement. It is secure, scalable, and enables you to publish both generalized school information (homework, announcements, etc.) and private, mission-critical information (e.g., student-specific grades, attendance) at your district, school, classroom and other key-group web pages. We sincerely hope you will view a live web demonstration to learn why Edline is the industry leader.

Your district's E-Rate Funding Year 7 (7/04 – 6/05) cost for Enhanced Edline Service is \$11,287.50. This cost includes:

- All Hardware and Software necessary for the Edline solution
- Standard set-up, Maintenance and Service Updates
- Technical Support (800 toll free Phone and Email)
- Basic Web Based Training

Thank you for the opportunity to present our web hosting service in response to your Form 470. Do not hesitate to contact us for more detailed information by calling 800.491.0010 or visiting [www.edline.com](http://www.edline.com).

Sincerely,



Jay Alter  
Vice President



162 North Franklin, Chicago, IL 60606  
312.346.9900(t) [www.Edline.com](http://www.Edline.com) 312.236.7251(f)  
SPIN # 143027282

**Edline Solution Provision Agreement (E-Rate) Contract Number: Y7- 200800000467909**  
**Edline agrees to provide, and Customer agrees to purchase, solutions as follows:**

**Customer:** Boone County School District  
69 Avenue B  
Madison, WV 25130  
T. (304) 369-8253  
F. \_\_\_\_\_

**Student Enrollment:** 4700 maximum

**Solution(s)** Edline Standard Service: Web Hosting

**Deployment** Application Service Provider (ASP)  
**Technical Support** End-User Support for Solution Administrators  
**Service Term:** 12 Months  
**Service Start Date:** July 1, 2004  
**Service End Date:** June 30, 2005  
**Annual Fee:** \$11,287

**SLD Approval.** The parties agree that Customer may cancel this contract should the Schools and Libraries Division or Administrator of the Universal Services Support Mechanism fail to approve the solutions provided pursuant to this agreement.

**Terms and Conditions.** *Customer waives its rights to pursue indirect or consequential damages in any claim arising out of the provision of software, services, or other solutions by Edline to Customer. Customer agrees that under no circumstances shall any liability for direct or indirect damages exceed the dollar amount paid by one party to the other. This terms and conditions shall supercede any other agreements that may exist between the parties, whether verbal or written, and may only be altered by subsequent written instrument executed by both parties, explicitly referencing this provision. Customer agrees that all Edline solutions are purchased "as is" and that Edline makes no express or implied warranties regarding the purchased solutions, including implied warranties of merchantability or fitness for a particular purpose.*

**Edline and Customer agree to provision of solutions as set forth above:**

**Customer:**

**Edline (SPIN#143027282):**

Richard Adkins  
Authorized Representative, Title  
Richard Adkins  
Signature

February 3, 2004  
Date

## Exhibit B



PO Box 06290  
Chicago, IL 60606  
T. 312.346.9900  
F. 312.236.7251

January 24, 2005

This letter provides further clarification why Edline's Web hosting service is 100% eligible.

**Edline Web Hosting Services – Funding Year 2004 Eligibility**

**I. Web Hosting Services**

1. Edline provides Web Hosting services to school districts. This service provides a means for Edline's school district customers to display content on the Internet.
2. Edline's customers pay for the right to establish their own Web sites and publish content to their Web sites on Edline servers that Edline owns, operates and maintains at Edline's data center.
3. Edline customers receive NO hardware (customer premises or dedicated), only the right to establish Web site(s) hosted on Edline's systems. NO hardware configuration is performed on a customer-specific basis. Edline is similar to services like Yahoo! Web Hosting in that the customer simply receives an account that enables it to create and maintain its Web site(s) hosted on the provider's systems, but the customer does not receive any customer-dedicated hardware infrastructure (servers, routers, etc.)
4. Edline's Web Hosting service includes a Web site and home page for every school, class, team, club, and committee in the school district, along with technical support (never sold separately).
5. Edline does not create or modify content for its customers, nor does Edline provide any hardware, configuration of routers (or any other equipment), graphic design, or other professional services. If the school district does not create content or publish content to the websites and home pages, there will be no information to view.
6. Therefore, in accordance with the Eligible Services List entry for "Web Hosting," Edline's Web Hosting Service is 100% eligible.

I hope this helps clarify matters. Please do not hesitate to contact me if I can be of further assistance.

Best Regards,

Jay Alter